

EXHIBIT 1

Jennifer Estremera (CA Bar No. 251076)
jestremera@reichmanjorgensen.com
REICHMAN JORGENSEN LEHMAN &
FELDBERG LLP
100 Marine Parkway, Suite 300
Redwood Shores, California 94065
Telephone: (650) 623-1401
Facsimile: (650) 623-1449

Christine E. Lehman (*pro hac vice*)
clehman@reichmanjorgensen.com
Connor S. Houghton (*pro hac vice*)
choughton@reichmanjorgensen.com
REICHMAN JORGENSEN LEHMAN &
FELDBERG LLP
1909 K Street NW, Suite 800
Washington, DC 20006
Telephone: (202) 894-7311
Facsimile: (650) 623-1449

Attorneys for Plaintiff
Athalonz, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ATHALONZ, LLC,

Plaintiff,

v.

UNDER ARMOUR, INC.,

Defendant.

Case No. 3:23-mc-80324-LJC

**PLAINTIFF'S SUPPLEMENTAL BRIEF
IN SUPPORT OF MOTION FOR DE
NOVO DETERMINATION OF
DISPOSITIVE MATTER REFERRED
TO MAGISTRATE JUDGE**

Location: Courtroom 10, San Francisco
Judge: Aracelia Martínez-Olgún

1 Plaintiff Athalonz, LLC (“Athalonz”) submits this Supplemental Brief in connection with its
2 Motion for De Novo Review of Dispositive Matter Referred to Magistrate Judge (Dkt. 24). On April
3 1, 2024, Defendant Under Armour, Inc. (“UA”) produced new documents in the underlying litigation
4 that are directly relevant to Mr. Curry’s Motion to Quash, filed in this Court as Case No. 3:23-mc-
5 80324. Athalonz is attaching Exhibits D – J as supplemental evidence with this Supplemental Brief.
6 These documents make clear that the key factual basis of Judge Cisneros’ order—that Athalonz had
7 not shown that Mr. Curry was involved in designing and developing the accused features¹ of the
8 Accused Curry Products—no longer holds and that Mr. Curry was in fact deeply involved.

9 As set forth in Athalonz’s original opposition to Mr. Curry’s motion, Athalonz has sought
10 documents relating to Mr. Curry’s role in designing and developing the Accused Products from UA
11 since the beginning of the litigation. Dkt. 11 at 5 (citing Dkt. 1-1, Ex. 5 and Dkt. 12, Ex. K). However,
12 at the time of the motion to quash, UA had not produced any internal documents relating to Mr.
13 Curry’s role, forcing Athalonz to rely only on public information in its opposition to Mr. Curry’s
14 motion to quash. Recently, though—and only after Judge Cisneros granted Mr. Curry’s motion to
15 quash without prejudice and the briefing on Athalonz’s objection to that order was complete—UA
16 produced for the first time highly relevant documents directly related to Mr. Curry’s role in
17 developing the Accused Products.

18 Those documents show that the basis for Mr. Curry’s motion was false. Specifically, the
19 supplemental evidence attached to this motion consists of internal UA documents detailing Mr.
20 Curry’s role in designing and developing the Accused Curry Products. What’s more, those documents
21 directly contradict the declarations that Judge Cisneros’ order granting the motion to quash relied
22 on—they show that Mr. Curry was heavily involved in the development of the soles of the Accused
23 Curry Products, including [REDACTED]

24 [REDACTED]

25
26
27 ¹ Athalonz’s objection is largely based on the erroneous conclusion that only the soles of the Accused Products are
28 relevant in determining the scope of discovery. While Athalonz maintains that objection, the documents UA
produced after Judge Cisneros’ order make clear that Mr. Curry was in fact involved in developing the soles, which
is an independent basis for denying Mr. Curry’s motion even under the legal framework in the original order.

1 To be clear, Athalonz continues to disagree that it needs to show Mr. Curry was directly
2 involved in developing the *soles* specifically to meet the standard to take third-party discovery, since
3 its patent claims cover the entire *shoe*. See Dkt. 24. However, the UA documents attached as
4 supplemental evidence here show that Mr. Curry *was* deeply involved in developing what Judge
5 Cisneros and Mr. Curry have deemed the “accused features” of the Curry products, the soles. For
6 example, relevant portions of those documents show the following²:

- 7 • Ex. D (UA0011737): “
- 8 [REDACTED]
- 9 [REDACTED]
- 10 [REDACTED]
- 11 [REDACTED]
- 12 [REDACTED]
- 13 [REDACTED]
- 14 [REDACTED]
- 15 [REDACTED]
- 16 [REDACTED]
- 17 [REDACTED]
- 18 [REDACTED]
- 19 [REDACTED]
- 20 [REDACTED]
- 21 [REDACTED]
- 22 [REDACTED]
- 23 [REDACTED]
- 24 [REDACTED]
- 25 [REDACTED]”
- 26
- 27

28 ² Emphasis has been added in bold and italics; any other bolding or italics is present in the original documents.

- 1 • Ex. F (UA0011868): “ [REDACTED]
- 2 [REDACTED]
- 3 [REDACTED]
- 4 [REDACTED]
- 5 [REDACTED]
- 6 [REDACTED]
- 7 [REDACTED]
- 8 [REDACTED]
- 9 [REDACTED] ”

- 10 • Ex. H (UA0012072): “ [REDACTED]
- 11 [REDACTED]
- 12 [REDACTED]
- 13 [REDACTED]
- 14 [REDACTED]
- 15 [REDACTED]
- 16 [REDACTED]
- 17 [REDACTED]
- 18 [REDACTED]
- 19 [REDACTED]
- 20 [REDACTED]
- 21 [REDACTED]
- 22 [REDACTED]
- 23 [REDACTED] ”

- 24 • Ex. D (UA0011737): “ [REDACTED]
- 25 [REDACTED]
- 26 [REDACTED]
- 27 [REDACTED]
- 28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]”

- Ex. D (UA0011737): “[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]”

- Ex. H (UA0012072): “[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]”

- Ex. H (UA0012072): “[REDACTED]
[REDACTED]
[REDACTED]”

- Ex. I (UA0012076): Notes on [REDACTED]
[REDACTED]
[REDACTED]

- 1 [REDACTED]
2 [REDACTED]
- 3 • UA produced a number of photographs showing [REDACTED]
4 [REDACTED] Athalonz's
5 infringement contentions. *See* Ex. G (UA0011995); Ex. J (UA0012138); Ex. E
6 (UA0011825); *compare with* Dkt. 1-1, Ex. 1 ¶¶ 54-56, 58-60, 66-69 (Athalonz's complaint
7 showing Curry shoes cut apart).

8 All of this evidence makes clear that Mr. Curry was, in fact, heavily involved in the design
9 and development of the soles of the Accused Curry Products. UA's internal, confidential documents
10 show that Curry [REDACTED] in the
11 Accused Products, including plainly stating that [REDACTED]

12 [REDACTED]
13 [REDACTED] Ex. D (UA0011737). UA's documents further
14 show that Curry [REDACTED] the Accused Products.
15 Indeed, those documents show that [REDACTED]

16 [REDACTED]
17 [REDACTED]
18 [REDACTED] Ex. H (UA0012072). Indeed, UA's documents even use
19 terminology [REDACTED] to Athalonz's patents: [REDACTED]

20 [REDACTED]
21 [REDACTED]
22 [REDACTED] Ex.
23 H (UA0012072) (emphasis added); *see* U.S. Patent No. 11,510,456 claim 10 ("a forefoot platform
24 juxtaposed to the heel platform, wherein the forefoot platform is constructed to have a first level of
25 compression proximal to the outer edge of the shoe and a second level of compression proximal to an
26 inner edge of the shoe."); claim 12 (wherein the forefoot platform comprises a resilient material of
27 varying density). And UA's internal documents (not its public marketing documents discounted by
28 Judge Cisneros) also show that [REDACTED]

1 [REDACTED] like Mr. Curry's signature Curry 8, 9, 10, and 11 Accused Products in this case, the
2 athletes are [REDACTED]

3 [REDACTED] Ex. D (UA0011737).

4 Judge Cisneros' order discounted the extensive public evidence attached to Athalonz's
5 opposition brief in favor of two declarations submitted with Mr. Curry's motion claiming that Mr.
6 Curry was not involved in the design process of UA's shoes. *See* Dkt. 23 at 10-11 (citing Dkt. 1-2 ¶ 4
7 and Dkt. 1-3 ¶¶ 5-6). But the weight previously afforded those declarations is inappropriate now,
8 given the new evidence that was not before the court (because UA improperly withheld it for six
9 months of discovery). Indeed, both of those declarations are at least questionable now, if not
10 downright false, where they claim the following:

- 11 • "Stephen does not design or develop the shape of the soles of the SC line of shoes, nor
12 determine what materials are used in the soles." Dkt. 1-2 ¶ 4.
- 13 • "Curry does not design the shape of the sole, or any other component, of the accused Curry
14 products. Curry does not choose the materials used in the sole, or any other component,
15 of the accused Curry products." Dkt. 1-3 ¶¶ 5-6.

16 UA's internal documents make clear that Curry [REDACTED]

17 [REDACTED]
18 [REDACTED] *See* Ex. D (UA0011737). And the evidence also shows that UA [REDACTED]
19 [REDACTED]

20 [REDACTED] Ex. H (UA0012072).

21 While the order granting Mr. Curry's motion did so without prejudice and found Athalonz
22 should first depose UA employees to test the accuracy of the declarations Curry offered, that result
23 should not hold given the new evidence. UA's internal documents make clear that Mr. Curry was

24 [REDACTED]
25 [REDACTED]
26 [REDACTED]. That is exactly the kind of information Athalonz is entitled to probe in a
27 deposition of Mr. Curry, and it is information that Athalonz cannot get from UA employees,
28 particularly where UA employees have already claimed Mr. Curry was not involved in the design

1 process that he clearly was involved in. Thus, even under the framework in the original order granting
2 Mr. Curry's motion—that only the soles of the Accused Products are relevant—Athalonz has readily
3 shown that Mr. Curry has unique, relevant insight.

4 For these reasons, as well as the reasons in its original Motion for De Novo Review, Athalonz
5 respectfully requests that the Court deny Mr. Curry's motion to quash and set a date for his deposition.
6
7

8 Dated: April 16, 2024

Respectfully submitted,

9 REICHMAN JORGENSEN LEHMAN &
10 FELDBERG, LLP

11 By /s/ Jennifer Estremera

12
13 Attorneys for Plaintiff
14 ATHALONZ, LLC
15
16
17
18
19
20
21
22
23
24
25
26
27
28